

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:

**PLC LITIGATION TRUST/
SPC LITIGATION TRUST,**

Debtors.

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§

**Case No.: 07-20027-C-11
Jointly Administered

(Confirmed Chapter 11)**

**SPC LITIGATION TRUSTEE'S OBJECTION TO
CLAIM NUMBER 624 OF DAVID LEMM**

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 20 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 20 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED.

A HEARING HAS BEEN SET ON THIS MATTER ON NOVEMBER 30, 2009 AT 2:00 P.M. IN CORPUS, CHRISTI, TEXAS.

Avidity Partners LLC, as SPC Litigation Trustee (the "SPC Litigation Trustee") appointed under the MRC/Marathon Plan and SPC Litigation Trust Agreement ("SPC") files this Objection ("Objection") To Claim Number 624 of David Lemm ("Lemm") and respectfully states as follows.

JURISDICTION

1. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(B)(2)(A), (B) and (O). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

A. The Plan and the SPC Litigation Trustee

2. On January 18, 2007 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors’ chapter 11 cases were procedurally consolidated for administrative purposes and are jointly administered under Case No. 07-20027.

3. By order dated July 8, 2008, this Court confirmed the First Amended Joint Plan of Reorganization for the Debtors, as Further Modified, With Technical Corrections, Proposed by Mendocino Redwood Company, LLC, Marathon Structured Finance Fund L.P., and the Official Committee of Unsecured Creditors (the “MRC/Marathon Plan”). The effective date of the MRC/Marathon Plan was July 30, 2008.

4. The MRC/Marathon Plan established a litigation trust for Scotia Pacific Company LLC (the “SPC Litigation Trust”). Avidity Partners, LLC was appointed as SPC Litigation Trustee pursuant to Section 8.6.2 of the MRC/Marathon Plan. *See* Confirmation Order, ¶ 11, p. 16. Pursuant to the MRC/Marathon Plan, The SPC Litigation Trustee has the right to object to Class 8 and Class 9 claims.

5. By order dated July 20, 2009, the deadline for the SPC Litigation Trustee to object to claims was extended until November 22, 2009 [Dkt. No. 4254].

B. David Lemm’s Proof of claim

6. On September 4, 2007, David Lemm filed Claim No. 624 (*See Exhibit A* hereto) against Scotia Pacific Company LLC (“**Scopac**”) asserting an unsecured non-priority claim of \$200,000.00.

7. The Addendum to Mr. Lemm's claim states as follows::

Supporting Documents Summary: In 2002, the parties entered into numerous oral and then written memorialization of agreements relative to the sale by Debtor to Creditor of approximately 5 acres of real property for \$65,000.00. When Debtor refused to eventually consummate the transaction and sell the property to Creditor, Creditor was forced in June 2002, to file a Complaint for, among other things: specific performance and breach of contract. Several months later, based upon other litigation Debtor had with others in the community, Debtor represented to Creditor that if Creditor were to dismiss the litigation, Debtor then would finalize the transaction of the sale of the property, and if it was unavailable, due to litigation, it would then sell comparable other real property to Creditor. Thereafter, Debtor again breached its agreement to sell the property, but then thereafter entered bankruptcy protection. Contemporaneous written letters and memoranda memorializing discussions and agreements relative to the agreement, and modifications thereto; lawsuit, Notice of Lis Pendens, etc., filed in the Superior Court litigation, Humboldt County Superior Court.

C. Objection to Claim

8. The SPC Litigation Trustee objects to Claim No. 624 on the following bases:

- (a) Mr. Lemm's claim is barred for failure to sign the proof of claim form under penalty of perjury;
- (b) Mr. Lemm's claim is barred because it lacks sufficient documentation to support his claims;
- (c) Mr. Lemm's claim is barred by the statute of frauds;
- (d) Mr. Lemm's claim fails as a matter of law because the purported agreement with Scopac was not authorized;
- (e) Mr. Lemm's claim fails as a matter of law because his purported agreement with Scopac was not supported by consideration;
- (f) Mr. Lemm's claim is barred by limitations;
- (g) Mr. Lemm's claim is barred by waiver;
- (h) Mr. Lemm's claim is barred by laches;

- (i) Mr. Lemm's claim is barred by estoppel;
- (j) Mr. Lemm's claim is barred by the doctrine of unclean hands;
- (k) Mr. Lemm's claim is barred by the parole evidence rule.
- (l) Mr. Lemm's claim should be denied since the amounts sought are inflated and excessive.

9. The SPC Litigation Trustee reserves all rights to amend this Objection and assert additional objections to Claim No. 624 of David Lemm on any other bases.

WHEREFORE, PREMISES CONSIDERED, the SPC Litigation Trustee respectfully requests that this Court enter an order (i) denying David Lemm's Claim No. 624; (ii) stating that David Lemm shall receive no distributions from the SPC Litigation Trust and (iii) granting the SPC Litigation Trustee such other and further relief as this Court deems appropriate.

Dated: October 31, 2009

Respectfully submitted,

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